

***Amendment and Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure***

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Serial No.: 09/600,392

Confirmation No.: 4850

Filed: September 8, 2000

***For: AN AUTOREGULATORY SYSTEM FOR VALIDATING MICROBIAL GENES AS POSSIBLE  
ANTIMICROBIAL TARGETS USING A TETRACYCLINE-CONTROLLABLE ELEMENT*****Remarks**

The Office Action mailed January 29, 2004 has been received and reviewed. Claims 1 and 77 having been amended and claims 2, 4, 6, 21-76, and 81 having been canceled, the pending claims are claims 1, 3, 5, 7-20, 77-80, and 82. Support for the amendments to claims 1 and 77 is found, for example, on page 4, lines 7-9 of the specification. Reconsideration and withdrawal of the rejections are respectfully requested.

**Examiner Interview**

A telephonic Examiner's Interview was held on July 16, 2004 between Examiner Gerald Leffers and Applicants' Representative Nancy Johnson. In this interview claim amendments that clarify the present invention and place claims 1, 3, 5, 7-20, 77-80, and 82 in condition for allowance were discussed. Examiner Leffers is thanked for the courtesy of this interview. Applicants reserve the right to pursue additional subject matter in continuation, continuation-in-part and/or divisional applications pursuant to 35 U.S.C. §120 and §121.

**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 1, 3, 8-20, and 77-80 under 35 U.S.C. §103(a) as being unpatentable over Bostian et al. (WO 96/40979, 19 December 1996) in view of Setterstrom et al. (U.S. Patent No. 6,309,669 B1) and further in view of Burnham et al. (U.S. Patent No. 5,891,670) or Nesin et al. ("Cloning and Nucleotide Sequence of a Chromosomally Encoded Tetracycline Resistance Determinant, *tetA*(M), from a Pathogenic, Methicillin-Resistant Strain of *Staphylococcus aureus*," *Antimicrob Agents Chemother.*, 1990 Nov.;34(11):2273-2276). This rejection is respectfully traversed.

Claims 1 and 77 have been amended to clarify that the processes of claims 1, 3, 5, 7-20, 77-80, and 82 comprise a TCE, "where said TCE is operably linked to both a first polynucleotide sequence encoding a reporter gene (RG) and a second polynucleotide sequence comprising a target gene (TG)." Applicants submit that Bostian et al. in view of Setterstrom et

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al. and further in view of Burnham et al. or Nesin et al. do not teach or suggest a TCE having both a reporter gene and a target gene operably linked on the same TCE construct. Withdrawal of the rejection of claims 1, 3, 5, 7-20, 77-80, and 82 under 35 U.S.C. §103(a) as being unpatentable over Bostian et al. in view of Setterstrom et al. and further in view of Burnham et al. or Nesin et al. is respectfully requested.

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**Summary**

It is respectfully submitted that the pending claims 1, 3, 5, 7-20, 77-80, and 82 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for  
Ford et al.

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July 28, 2004  
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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28<sup>th</sup> day of JULY, 2004, at 11:20 AM (Central Time).

By: Sam Her

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